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UNCLAS SECTION 01 OF 03 RANGOON 000244

SIPDIS

STATE FOR EAP/MLS AND EB/IPE  
DEPT PLEASE ALSO PASS TO USTR: JCHOE-GROVES  
DOC FOR JBOGER, DOC PLEASE PASS TO USPTO AND LOC

SENSITIVE

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SUBJECT: BURMA'S INADEQUATE IPR REGIME

REF: STATE 14937

1. (U) Burma is, and should remain, on the 2006 Special Mention List for Special 301 Review. Following is an update on the current IPR protection situation in Burma.

#### Overview

2. (U) Burma does not have adequate IPR protection. Patent, trademark, and copyright laws and regulations are all deficient in both regulation and enforcement. After Burma joined ASEAN in 1997, it agreed to modernize its intellectual property laws to comply with the ASEAN Framework Agreement on Intellectual Property Cooperation. A new and comprehensive IPR law, first drafted in 1994, still awaits government approval and implementation. A Committee for IPR Implementation, established in July 2004, is working to obtain GOB approval of the new law, with assistance from the World Intellectual Property Organization (WIPO). The WTO postponed required implementation of the TRIPS Agreement for Least Developed Nations from 2005 until 2013.

3. (U) The Government of Burma introduced a Patents and Design Law in 1946, but never brought it into force. The Indian Patents and Designs Act of 1911, enacted under British colonial rule, still governs the registration of all patents and designs.

4. (U) The piracy of music CDs, video CDs, CD-ROMS, DVDs, books, software, and product designs is evident nationwide, especially in border regions and in the major urban centers of Mandalay and Rangoon. Most consumers of IT products in Burma, both in the private sector and in government, largely rely on pirated software. Given the poor state of the economy, small number of local customers, and lack of manufacturing infrastructure (e.g., unreliable electricity and supplies, poor transportation networks), piracy does not have a significant adverse impact on U.S. products at this time.

5. (U) Burma has no trademark law, although trademark registration is possible. Many domestic and international firms place caution notices in local newspapers to declare ownership of their trademarks. After publication, the owners can in theory take criminal and/or civil action against trademark infringers. Corruption and an untrained judiciary, however, severely limit legal options. Title to a trademark depends on use of the trademark in connection with goods sold in Burma.

6. (U) The British colonial government published a Copyright Act in 1914, but without any means to register copyrights. Since no succeeding government has ever instituted a means to register copyrights, there is no legal protection in Burma for foreign copyrights.

7. (U) In the absence of effective IPR protection laws, local laws such as the Merchandise Marks Act, the Specific Relief Act, the Sea Customs Act, and the overall penal code provide the only possible protection for intellectual property rights.

#### Government Efforts

8. (U) To meet the former TRIPS deadline of December 2005, Burma began drafting new IP laws, with technical assistance from WIPO and WTO. The draft legislation includes trademark, patent, copyright, and industrial design laws. As a least developed country member of WTO, Burma is now obliged to meet its TRIPS obligations by 2013. We have provided informal guidance from USPTO to assist GOB drafting efforts. The GOB had initially indicated it would pass the IPR law in early 2006 and others later. However, the Attorney General now plans to draft all four laws and their implementing regulations together before the 2013 deadline.

9. (U) A Committee for the Implementation of the

Intellectual Property System, formed in July 2004 and chaired by the Prime Minister, guides drafting and implementation efforts. The Committee has twenty-five members, including nineteen ministers, the Chief Justice, the Attorney General, Rangoon's Mayor, and the President of the Chamber of Commerce. A number of Rangoon workshops has assisted the process, including:

- The WIPO National Seminar on Intellectual Property, jointly organized by the Ministry of Science and Technology and WIPO, October 22 to 23, 1997;
- A seminar on the "Legal Implications and Myanmar's Obligation to WTO Agreement", co-organized by the National AFTA Unit, the Ministry of Foreign Affairs of Singapore and the International Trade Institute of Singapore, September 17 to 19, 2001;
- A presentation by officials of Attorney General's Office on the "Basic Concept of Intellectual Property Rights" at a seminar on development of automobile manufacturing technology, May 10, 2003;
- A workshop on implementation of agreements on technical trade-related copyright co-organized by the Ministry of Commerce and WIPO, June 28 to 29, 2004;
- A workshop on Intellectual Property co-organized by WIPO and WTO, February 3 to 4, 2005;
- An Intellectual Property Rights seminar organized by WIPO, April 25 to 26, 2005;
- Presentations by legal consultants on "Intellectual Property System and Its Enforcement in Myanmar" and "Safeguarding the Trademark, Safeguarding the Venture" at the Myanmar Computer Professional Association (MCPA) on June 18, 2005;
- A workshop on Intellectual Property Rights organized by WIPO, August 20 to 25, 2005;
- A seminar on Copyright Protection co-organized by Asian Pacific Cultural Center for UNESCO (APCCU) and Myanmar Writers and Journalist Association, September 7 to 9, 2005;
- A workshop conducted by the Myanmar Writers and Journalist Association on copyright issues for lawyers, writers and publishers on November 3, 2005.
- In addition, the Secretary of the Myanmar Writers and Journalists Association, Maung Hsu Shin, is finalizing a Burmese version draft of the Asian Copyright Manual for distribution in country.

#### Printed Materials

10. (SBU) The most obvious infringement of IPR in Burma is the reprinting and photocopying of books and other publications without permission. The ruling military regime strictly controls public access to information from all independent media and information sources, so the unmet public demand is great. All books must be reviewed by government censors before publication, and books by local writers also need official permission from the Ministry of Information to be published. With no effective means to protect copyrights, there is no incentive to obtain the legal rights to publish foreign works in Burma. Importers also have difficulty getting permission from the Scrutiny Board to import authentic books and magazines. They are required to submit advance copies, apply for import licenses (a very lengthy process), and submit the books for further review upon arrival. The authorities censor most publications heavily and impose an outright ban on many books and other materials, particularly those that make any mention of past or current conditions in Burma. The people of Burma remain avid readers, but the only way most are able to access outside information is via smuggling, black market sales, and illegal photocopying.

#### CDs, DVDs and Computer Software

11. (SBU) Poor IPR protection of music and films has a relatively minor impact in Burma because the market for counterfeit goods in this low-income country is very small and because inadequate infrastructure (bad roads, expensive power supply, unreliable supply) make establishing production facilities unattractive. Most of the limited domestic manufacture/trade of counterfeit CDs and DVDs is linked to the drug syndicates that operate in areas outside of GOB control in the Golden Triangle region of Shan State in eastern Burma.

12. (SBU) The everyday use of pirated software throughout Burma, however, is widespread. Local distributors openly make copies of the pirated software (primarily brought in

from Malaysia) using CD writers and then sell the products to the public for 40-50 cents per CD. Two factories manufacture blank CDs, one in Rangoon (run by Sony representative TMW Co.) and one in central Burma run by a Sino-Burmese company. The two factories produce rewritable blank CDs and local music CDs and VCDs. The demand for computer software in Burma is too low for mass production; demand can be met individually by using CD Writer programs. Most legal and pirated entertainment CDs, VCDs, and DVDs come into Burma from China. Chinese quality is better, and it is considered cheaper to import Chinese products than to reproduce them locally.

13. (U) Government offices are required to use legal software on any projects for international organizations, such as the UN and JICA. Since there is no authorized dealer for computer software in Burma, there is little incentive to buy legal software (through an agent who purchases it from Singapore). Owners of the legal product face further challenges in getting regular legal updates from Singapore (which requires additional payments to the agent). Most notebook computers sold in Burma come with legal software pre-installed by the manufacturers. Until avenues for legal software purchase appear in Burma, most computer users in Burma will continue to rely on the illegal copies and the black market to meet their minimal IT needs.

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